



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAR 23 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kevin A Hall, Esq.
Nelson Mullins Riley & Scarborough LLP
1320 Main Street, 17th Floor
Columbia, SC 29201

RE: MUR 5971
Mary Jennifer Adams

Dear Mr. Hall:

This is in reference to the complaint you filed with the Federal Election Commission on February 6, 2008, concerning Mary Jennifer Adams. The Commission found that there was reason to believe that Mary Jennifer Adams knowingly and willfully violated 2 U.S.C. §§ 432(b) and (c), 434(b), and 439a, provisions of the Federal Election Campaign Act of 1971, as amended. On March 12, 2009, a conciliation agreement signed by the respondent was accepted by the Commission. Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). A copy of the agreement with Mary Jennifer Adams is enclosed for your information.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Ana J. Peña-Wallace
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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In the Matter of)

Mary Jennifer Adams)

MUR 5971

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint filed by Lindsey Graham for Senate and Kevin A. Hall, in his official capacity as treasurer. The Federal Election Commission ("Commission") found reason to believe that Mary Jennifer Adams ("Respondent"), knowingly and willfully violated 2 U.S.C. §§ 432(b) and (c), 434(b), and 439a, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).
- II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondent enters voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:
 1. Lindsey Graham for Senate ("Committee") is a political committee within the meaning of 2 U.S.C. § 431(4).

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2. Kevin A. Hall is the current treasurer of the Committee.

3. The Committee has filed disclosure reports with the Commission since 2001. During the relevant period, from January 2002 through March 2005, Neil Byerley served as treasurer for the Committee. Mr. Hall was designated as treasurer of the Committee on April 13, 2005.

4. At all relevant times, Adams served as Assistant Treasurer and Campaign Administrator for the Committee. Her duties included the following: receiving and depositing all contributions, receiving and retaining bank statements, keeping records of campaign receipts and disbursements, bookkeeping, making disbursements, preparing, signing, and filing reports with the Commission, along with other miscellaneous campaign related activities

5. In June 2007, the Committee informed the Commission's Reports Analysis Division that Adams had misappropriated funds from the Committee and from Senator Graham. On October 2, 2007 and January 26, 2006, the Committee filed amendments to reports from the 2002 through the 2006 election cycles that disclosed Adams' unauthorized transactions.

6. Specifically, between January 23, 2002 and July 25, 2005, Adams issued at least \$280,688.84 in unauthorized funds to herself and to her personal creditors and made \$18,172.46 in unauthorized deposits into a Committee bank account. The unauthorized deposits consisted of forged checks from Senator Graham's personal bank accounts and credit card advance checks from a credit card Adams fraudulently obtained in Senator Graham's name.

7. In order to avoid detection, Adams manipulated Committee records and falsified the Committee's reports filed with the Commission. She also altered at least fifty-two checks and eight bank statements to disguise her theft.

8. On March 10, 2008, Adams was indicted in Oconee County, South Carolina, on state

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criminal charges related to the embezzlement of Committee funds. The indictment included five counts of Breach of Trust with Fraudulent Intent and one count of Financial Identity Fraud, in violation of S.C. Code Ann. §§ 16-13-230 and 16-13-510 (1976). On November 20, 2008, Adams pled guilty to those charges and was sentenced to 10 years incarceration, with all but 18 months suspended, and a period of 5 years probation supervision. She was also ordered to pay restitution to the Committee in the amount of \$280,688.84.

9. Under the Act, a treasurer is required to accurately keep an account of and report receipts and disbursements.¹ See 2 U.S.C. §§ 432(c)(5), 434(b)(2), (3), (4) and (6). Committee treasurers and any other person required to file any report or statement under the Act and the Commission's regulations are also personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it.

11 C.F.R. § 104.14(d).²

10. The Act also prohibits the commingling of committee Federal funds with "the personal funds of any individual." 2 U.S.C. § 432(b)(3) and 11 C.F.R. § 102.15.

11. Additionally, the Act prohibits any person from converting contributions to a Federal candidate for personal use. 2 U.S.C. § 439a(b)(1). "Personal use" means any use of funds in a campaign account of a federal candidate to fulfill a commitment, obligation or expense of any

¹ The Act's recordkeeping obligations include keeping an account of the name and address of every person to whom a disbursement is made, together with the date, amount and purpose of the disbursement and keeping a receipt, invoice or cancelled check for disbursements in excess of \$200. 2 U.S.C. § 432(c)(5) and 11 C.F.R. § 102.9(b)(2). Disclosure reports shall include, *inter alia*, the total amount of receipts and disbursements and the name and address of each person to whom an expenditure exceeding \$200 is made together with the date, amount and purpose of the expenditure. See 2 U.S.C. § 434(b).

² Commission regulations allow an assistant treasurer to act in place of a treasurer if the treasurer is unavailable. 11 C.F.R. § 102.7.

person that would exist irrespective of the candidate's campaign duties. 11 C.F.R. § 113.1(g).

The term "person" includes individuals and committees. 2 U.S.C. § 431(11).

12. The phrase "knowing and willful" indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H 2778 (daily ed. May 3, 1976); *see also Dramesi for Cong. Comm.*, 640 F. Supp. at 987 (distinguishing between "knowing" and "knowing and willful"). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *Id.* at 214-15.

13. Mary Jennifer Adams failed to properly disclose receipts and disbursements of at least \$298,861.30. Adams also commingled Committee funds and converted those funds to her own personal use, then manipulated Committee records and falsified disclosure reports to disguise her actions.

V. 1. Respondent knowingly and willfully violated 2 U.S.C. §§ 432(c) and 434(b) by deliberately failing to maintain proper records of disbursements and to file accurate reports of receipts and disbursements in the Committee's disclosure reports.

2. Respondent knowingly and willfully violated 2 U.S.C. §§ 432(b) and 439a by commingling Committee funds with personal funds and converting Committee funds to her own personal use.

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VI. Respondent will take the following actions:

1. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Two Thousand Five Hundred Dollars (\$2,500), pursuant to 2 U.S.C. § 437g(a)(5)(B), contemporaneously with her signing of this agreement.

2. Respondent will cease and desist from violating 2 U.S.C. §§ 432(b), (c), 434(b), and 439a.

3. Respondent is prohibited from working or volunteering for federal political committees in a capacity involving the committee's finances for a period of five (5) years.

4. Respondent, through the submission of extensive financial documentation to the Commission and additional representations, has indicated that financial hardship prevents her from paying a significant civil penalty to the Commission. The Commission regards these submissions and representations as material representations. Due to the mitigating circumstances presented by Respondent's financial condition and her criminal conviction on related charges, the Commission agrees to depart substantially from the civil penalty that the Commission would ordinarily accept for this type of activity. If evidence is uncovered indicating that Respondent's financial condition is not as stated, a civil penalty of Three Hundred Eighty-Two Thousand Dollars (\$382,000) shall be immediately due, pursuant to 2 U.S.C. § 437g(a)(5)(B).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof

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has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.


IX. Respondent shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Thomaseia P. Duncan
General Counsel

BY:


Ann Marie Terzaken
Associate General Counsel
for Enforcement

3/19/09
Date

FOR THE RESPONDENT:

Mary Jennifer Adams
(Name)
(Position)

1-27-09
Date

Melanie E.M. McNally
(Witness) Melanie E.M. McNally

1-27-09
(Date)

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